IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.994 OF 2005

Ratan Sorabji Mistry & Anr. ...Appellants

Versus

Homi Sorabji Mistry ...Respondent

.....

Mr.Parways Bhumgara for Appellants.

Mr.A.M.Mody for Respondent.

.....

CORAM: A.M.KHANWILKAR, J.

APRIL 20, 2006.

P.C.

1. Heard Counsel for the parties.

2. I see no reason to interfere with the order passed by the Court below. The Appellants failed to value the Plaint at the market value of the suit flat for recovery of its possession in terms of order dated 28th April 2005. If it is so, no fault can be found with the impugned order rejecting the Application of the Appellants seeking

permission to pay court fee of valuation of Rs.5,400/- (Rupees Five Thousand Four Hundred) which comes to Rs.740 less Rs.60, which was already paid. The relief claimed in the Application is not in accord with the direction given by the Trial Court in order dated 28th April 2005. The argument of the Appellants that the Appellants have correctly valued the plaint by applying 150 times rent of the suit property, is unacceptable. The Appellants were required to value the Plaint at the market value of the suit flat in terms of order dated 28th April 2005 and offer Court fee on that basis which is not the application preferred by the Appellants before the Trial court. Unless the Appellants were to question the correctness of the order dated 28th April 2005 passed by the Trial Court, it is not open for the Appellants to argue contrary to the direction contained in the said order. Thus understood, there is no substance in this Appeal. Dismissed.

A.M.KHANWILKAR, J.